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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,646	01/29/2004	Roger P. Jackson	10,390	5706

7590 11/15/2006
John C. McMahon
PO Box 30069
Kansas City, MO 64112

EXAMINER

WOO, JULIAN W

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,646

Applicant(s)

JACKSON, ROGER P.

Examiner

Julian W. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/29/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the informalities, which can be corrected as follows: On page 1, under "Cross Reference to Related Applications," Pat. Nos. —6,726,687— and —6,454,772— should respectively replace the blank after each occurrence of "Patent No." Appropriate correction is required.

Claim Objections

2. Claims 2-13 are objected to because of informalities, which can be corrected as follows: In line 1 in each of claims 2-13, "closure" should be replaced by —closure plug—. Also in claims 6 and 13, "gripable" should be replaced by —grippable—. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 9, 13, and 16, "said plug" lacks antecedent basis.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Dent (GB2140523). Dent discloses, at least in figures 14-16, a closure plug, plug closure, or closure including a body having a radially outward surface that has a thread thereon, top (at 16) and bottom surfaces, where at least one bore (20) is sized and shaped to receive a tool, extends generally axially at least partially through the body from top to bottom thereof, and where the bore is spaced from and positioned between a central axis of the body and a periphery of the body; where the body has a pair of spaced bores, where the body is generally cylindrical in shape, where a break-off head (14A) is joined the body by a neck (16) positioned between bores, where the break-off head has a tool grippable outer surface; where the bores are positioned so as to be inaccessible by a tool until the break-off head is broken from the plug. Note: The introductory statements of intended use (e.g., "for use with an open-headed medical implant having a pair of spaced and interiorly threaded arms") have been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over Dent's device, which is capable of being used as claimed if one desires to do so.

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7. Claims 1, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Spencer (6,349,794). Spencer discloses, at least in figure 6, closure plug (59) including a body having a radially outward surface that has a thread thereon, top and bottom surfaces, where at least one bore (26) is sized and shaped to receive a tool and extends generally axially at least partially through the body from a top (63) to a bottom thereof, and where the bore is spaced from and positioned between a central axis of the body and a periphery of the body; where the closure plug includes an axial threaded bore passing entirely through the body from a top (42) to a bottom thereof and a threaded set screw (60) sized and shaped to extend outward from the body bottom surface.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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9. Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dent in view of Wagner (5,334,203). Dent discloses the invention substantially as claimed, but does not disclose three spaced tool receiving bores being spaced 120 deg. from adjacent tool receiving bores, and Dent does not disclose a tool having a grippable handle, an engagement face, and a post. Wagner teaches, at least in figure 1, a closure plug (38) including three spaced tool receiving bores being spaced 120 deg. from adjacent tool receiving bores, and Wagner teaches a tool (44) as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Wagner, to modify Dent's device, so that there are three spaced tool receiving bores being spaced 120 deg. from adjacent tool receiving bores, and so that there is a tool for use with the device. Such a configuration of bores and a tool would allow the tool to grip Dent's closure plug and exert more torque for turning the plug and ease its installation or removal.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dent in view of Parker et al. (6,053,078). Dent discloses the invention substantially as claimed, but does not disclose four spaced tool receiving bores as claimed. Parker et al. teach, at least in figure 2A and in col. 3, lines 36-46 and col. 4, lines 9-11; a plug (10) with at least four spaced tool receiving tool receiving bores as claimed, which are configured to receive a tool (20). It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Parker et al., to modify Dent's device, so that there are four spaced tool receiving bores as claimed. Such a configuration of

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bores would allow the tool to grip Dent's closure plug and transfer more torque for turning the plug and ease its installation or removal.

11. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dent in view of Reed (6,261,039). Dent discloses the invention substantially as claimed, but does not disclose that the body includes a threaded axial extending bore from the bottom to near the top thereof, where the axial bore is located beneath the neck and is accessible from a top of the body when the break-off head breaks away from the body. Reed teaches, in figures 1-3 and 11-13, a closure plug body (10) including a threaded axial extending bore (114) from the bottom to near the top thereof, where the axial bore is located beneath a neck (30) and is accessible from a top of the body when a break-off head (20) breaks away from the body. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Reed, to include a threaded axial extending bore as claimed in the closure plug of Dent. Such a modification would allow Dent's device to be used in thread repair, where the axial bore is adapted to receive a desired threaded fastener.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo
Primary Examiner

November 13, 2006